



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Squires Communications, Inc.

File: B-237659

Date: March 12, 1990

Fred J. Mueller, for the protester.
Walter R. O'Connell, for Hoppmann Corporation, an interested party.
Captain Charles A. Walden, U.S. Air Force Judge Advocate General Corps, for the agency.
C. Douglas McArthur, Esq. and Michael Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation does not give preference to in-house capabilities for performance of maintenance and training, agency reasonably found firm intending to subcontract portions of these services acceptable.

DECISION

Squires Communications, Inc., protests the award of a firm, fixed-price contract under request for proposals (RFP) No. DCA100-89-R-0126, issued by the Defense Communications Agency, for point-to-point video teleconference systems to be installed in two locations. The protester contends that the agency's evaluation of proposals was unreasonable.

We deny the protest.

The RFP, issued on June 27, 1989, solicited a contract to engineer, furnish, install and test digital video teleconference systems at the Old Executive Office Building and the Anacostia Navy Yard in Washington, D.C., to function as a secure video teleconference network. The solicitation contained three 1-year options for maintenance of the system after performance began and included requirements for operator and maintenance training. The RFP sought prices

for both TEMPEST equipment and non-TEMPEST equipment and provided for award on either basis.^{1/}

The RFP contained the standard clause at Federal Acquisition Regulation (FAR) § 52.215-16 (FAC 84-53), providing for award based on the offer most advantageous to the government, price and other specified factors considered, but advised offerors that technical aspects were more important than price. The first phase of the technical evaluation involved a determination of whether each offeror met the agency's minimum requirements; in the second phase, the agency performed a comparative evaluation, which provided for consideration of seven factors. These seven factors included technical approach and understanding, completeness and thoroughness of the proposal, commitment, capability, supportability and features and functions; the seventh factor, two-thirds the importance of the other six factors, related to whether the system offered could be modified to meet TEMPEST requirements. The RFP also provided that award could be made without discussions.

Of the six offerors that submitted proposals on August 28, Hoppmann Corporation received the highest technical score, 8.57, versus 5.76 for the protester. The source selection board found Hoppmann's proposal comprehensive and acceptable; the equipment offered was found superior in a number of respects. The source selection board rated the protester as marginal and had difficulty assessing the protester's understanding of the requirements, since its proposal contained little information on the equipment proposed but, for the most part, merely repeated the statement of work contained in the solicitation.

Based on Hoppmann's initial proposal, which received the highest technical rating and offered the lowest cost, the agency awarded Hoppmann a contract for TEMPEST equipment on October 20. Squires filed this protest on November 4.

The protester contends that Hoppmann's proposal could not meet the RFP requirements for maintenance and training. Specifically, the protester states that Hoppmann, unlike the protester, is a systems integration firm which must subcontract the maintenance and training work. The protester argues that since Hoppmann must subcontract maintenance, its proposal offers severe disadvantages, particularly in providing emergency maintenance services.

^{1/} TEMPEST equipment contains shielding that suppresses incidental electromagnetic radiation, among which are radio waves, which can be monitored, potentially compromising secu

We do not find the agency's determination of the relative merit of proposals to have been unreasonable, an abuse of discretion, or a violation of procurement statute or regulations. Hoppmann did propose to purchase the equipment and obtain certain services from VideoTelecom Corporation. However, the RFP evaluation factors, in providing for consideration of the technical resources available to offerors, expressed no preference between offerors possessing in-house resources and those obtaining such resources by subcontract. Also, in evaluating offers, the agency found no advantage in having its contractor use in-house resources for technical support, maintenance and training, since such services, which constitute a minor part of the overall contract effort, are readily available by subcontract.

Further, Hoppmann's proposal demonstrated that Hoppmann had commitments from both VideoTelecom and Dovetail Systems Corporation, an authorized VideoTelecom dealer, to provide support in the maintenance and training portion of the contract. Hoppmann's proposal included a plan for meeting the RFP requirements for training and maintenance, and it is also obvious that both Dovetail, as an authorized dealer, and the manufacturer itself, are experienced in the required maintenance and training. While the protester offered to meet RFP requirements, which called for a 1-day response time, the awardee's proposal offered three tiers of service including the required 1-day response time and an optional 2 hour emergency service. Thus, we find the agency reasonably concluded that Hoppmann's proposal met the RFP requirements in this regard.

The protester also contends that the awardee has no access to data necessary to furnish the TEMPEST equipment required by the RFP. We find that both the original equipment manufacturer and the dealer from which Hoppmann is purchasing the video equipment have pledged in writing their full support to Hoppmann in providing required TEMPEST shielded equipment including making available "any [proprietary] required system diagrams, prints, and layouts" under a nondisclosure agreement. Thus, the protester's allegation is factually erroneous.2/

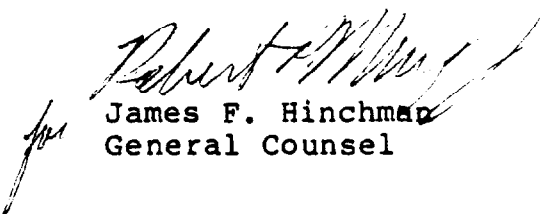
2/ We note that Hoppmann proposed to provide a TEMPEST system enclosure, rather than individual pieces of TEMPEST equipment. The protester contends that Hoppmann in its proposal failed to address potential technical problems, including ambient light, TEMPEST shielding of the keyboard (which must be located outside the console), and other

(continued...)

The protester argues that the agency should not have based its evaluation on the Hoppmann's proposal but should have insisted upon a finished design and product, that it should "go beyond printed words and puffery to properly evaluate a proposal." The short answer is that the RFP did not contemplate the delivery of furnished systems for evaluation purposes prior to award. The protester itself recognized this in offering a TEMPEST component that was still in development.

Finally, Squires contends that the evaluation should have given its proposal more points, based on its plans to use a woman-owned small and disadvantaged business for the TEMPEST work. In support of its position that it was entitled to a preference, the protester cites the standard FAR clauses 52.219-8 (FAC 84-48), Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, and 52.219-13 (FAC 84-52), Utilization of Woman-Owned Small Businesses. As the awardee notes, however, such a preference would apply equally to its own proposals which contains an arrangement to subcontract with a minority small disadvantaged business. In any event, neither of the clauses cited by the protester establishes an evaluation preference, but serve only to establish the obligations of contractors after award for subcontracting with disadvantaged and woman-owned businesses. See Essence Designs, B-234916, Apr. 11, 1989, 89-1 CPD ¶ 373.

The protest is denied.


James F. Hinchman
General Counsel

2/(...continued)

technical matters with its enclosure approach. Our review of Hoppmann's proposal shows that the awardee's proposal addresses the technical concerns; the agency advises that TEMPEST versions of the keyboard are available from the manufacturer.